Filed 3/4/10 P. v. Roberson CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK WILLIAM ROBERSON,

Defendant and Appellant.

F058084

(Super. Ct. No. BF124670A)

OPINION

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kern County. Jerold R. Turner, Judge.

Robert F. Kane, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Ward A. Campbell and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Ardaiz, P.J., Levy, J. and Hill, J.

Mark William Roberson was charged with (1) transportation of methamphetamines for purposes of sale (Health & Saf. Code, § 11379, subd. (a).); (2) possession of methamphetamines for sale (Health & Saf. Code, § 11378.); and (3) misdemeanor driving with a suspended license (Veh. Code, § 14601.1, subd. (a).). After Roberson's motion to suppress evidence was denied, he pled no contest to count 2, and counts 1 and 3 were dismissed. Roberson was placed on probation, one of the terms of which was to serve one year in jail. On appeal, he contends his motion to suppress should have been granted because the search of his car, which produced the methamphetamine, was unconstitutional. We disagree and will affirm.

FACTS

About noon on July 29, 2008, City of Bakersfield police officer Colby Earl followed Roberson's vehicle into a dead end alley. Roberson and Officer Earl exited their vehicles, and Officer Earl asked Roberson what was going on. Roberson responded he was going to visit a friend. Officer Earl asked Roberson for his driver's license. Roberson did not produce his driver's license, but produced an ATM card with his name on it. Officer Earl asked Roberson for permission to search him. Roberson responded, "[G]o ahead, I've got nothing illegal." Upon searching Roberson, Officer Earl found a digital gram scale, three plastic baggies, and more than $1,000 in cash (48 $20 bills, among various other smaller bills) wrapped around the scale in Roberson's pocket.

Officer Earl conducted a records check to ascertain the status of Roberson's license. The check revealed that Roberson's license was suspended or revoked. Officer Earl then arrested Roberson.

Officer Earl conducted an inventory search of Roberson's car. He found an Altoids candy tin under the driver's seat that contained a clear plastic baggy with approximately eight grams of a white crystalline substance, which Officer Earl believed to be methamphetamine.

DISCUSSION

Standard of Review

An appellate court reviews a trial court's ruling on a motion to suppress evidence that the defendant asserts was illegally obtained as a mixed question of law and fact. An appellate court accepts the trial court's findings of fact as long as they are supported by substantial evidence. An appellate court resolves de novo the selection of the applicable law and the application of constitutional principles to the facts. (*People v. Willis* (2002) 28 Cal.4th 22; *People v. Woods* (1999) 21 Cal.4th 668, 673-674.)

(1) Roberson was not detained.

Roberson asserts that Officer Earl unlawfully detained him and that his consent to the search of his person was the product of that illegal detention. Respondent asserts that the initial contact and search of Roberson were part of a consensual encounter.

Police contacts with individuals may be classified into three categories, ranging from the least to the most intrusive: consensual encounters that result in no restraint of an individual's liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints. (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

In *United States v. Mendenhall*, 22 year old Mendenhall arrived in Detroit on a flight from Los Angeles. (*United States v. Mendenhall* (1980) 446 U.S. 544.) Because she exhibited behavior that fit the profile of a drug courier, Drug Enforcement Administration (DEA) agents approached her and asked to see her identification and airline ticket. The names on the driver's license and airline ticket she produced did not match, so the agents asked her to accompany them to the airport DEA office for further questioning. She agreed to do so. While at the office, an agent asked her if she would allow a search of her person and her bag, to which she responded, "Go ahead." (*Id.* at p. 548.) During the search, agents found two packages of heroin, and Mendenhall was arrested. (*Id.* at p. 549.)

The United States Supreme Court found that this was a consensual encounter and search. The Court stated, "We conclude that a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." (*United States v. Mendenhall, supra,* 446 U.S. at p. 554, fn. omitted.) The Court noted certain facts that supported its determination that no seizure had occurred: the events took place in the public airport concourse, the agents did not summon the respondent to their presence but approached her and identified themselves as federal agents, and the agents requested but did not demand to see Mendenhall's ticket and identification. The Court held, "Such conduct without more, did not amount to an intrusion upon any constitutionally protected interest. The respondent was not seized simply by reason of the fact that the agents approached her, asked her if she would show them her ticket and identification, and posed to her a few questions. Nor was it enough to establish a seizure that the person asking the questions was a law enforcement official. [Citations.] In short, nothing in the record suggests that the respondent had any objective reason to believe that she was not free to end the conversation in the concourse and proceed on her way, and for that reason we conclude that the agents' initial approach to her was not a seizure." (*Id.* at p. 555.)

Roberson's encounter with Officer Earl was analogous to the encounter in *Mendenhall*. The encounter took place in a public place (a public street/alley). In fact, there was a small park in the vicinity and there were five or six people in the park approximately 75 feet away. Additionally, Officer Earl did not summon Roberson to his car, order him to stop or freeze, draw his weapon, illuminate the overhead lights or siren on his vehicle, or make any other demands of Roberson. Officer Earl merely exited his car and approached Roberson wearing his uniform, which, along with the squad car he was driving, identified him as a law enforcement officer. While Roberson asserts that Officer Earl "demanded" his driver's license, there is no evidence in the record that

Officer Earl did anything other than simply ask Roberson for his license. Roberson was not seized simply because Officer Earl approached him and asked for his driver's license. There is nothing in the record suggesting that Roberson had any objective reason to believe that he was not free to end the conversation in the alley and proceed on his way. Therefore, for the same reasons set forth in *Mendenhall*, *supra*, 446 U.S. 544, we conclude that the officer's contact with Roberson was a consensual encounter rather than a detention.

Roberson contends that the encounter with Officer Earl was the equivalent of a de facto car stop that required reasonable suspicion that a violation had occurred. (See *People v. Saunders* (2006) 38 Cal.4th 1129, 1135 [reasonable suspicion of violation required to justify traffic stop].) However, this contention is not supported by the record. Officer Earl did not even stop Roberson. Rather, Officer Earl testified without contradiction that Roberson, of his own accord, pulled into the alley, stopped his vehicle, and exited his vehicle before he even noticed Officer Earl approaching him. After Roberson exited his vehicle, Officer Earl parked his patrol car 15 to 20 feet away from Roberson's vehicle, exited the patrol car, and initiated the consensual encounter described above.

Further, the voluntariness of Roberson's responses did not depend on whether Officer Earl told him he did not have to cooperate or answer his questions. (*United States v. Mendenhall, supra,* 446 U.S. at p. 555 [the holding that no seizure occurred was not affected by the fact that Mendenhall was not expressly told by the DEA agents that she was free to decline to cooperate with their inquiry].) And, as in *Mendenhall*, we reject the argument that the only inference that could be drawn from Roberson's cooperation, even if it was against his self interest to do so, was that Officer Earl compelled him to answer his questions. (*Ibid.*) "It may happen that a person makes statements to law enforcement officials that he later regrets, but the issue in such cases is not whether the statement was self-protective, but rather whether it was made

voluntarily." (*Id.* at pp. 555-556.) Here, there is no evidence in the record suggesting that Officer Earl compelled Roberson to cooperate in the initial encounter.

Nor is there evidence in the record that Roberson did anything other than act voluntarily in response to Officer Earl's initial questions, including Officer Earl's request to search his person. "Law enforcement officers do not violate the Fourth Amendment's prohibition against unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." (*United States v. Drayton* (2002) 536 U.S. 194, 200.)

Accordingly, Officer Earl's contact with Roberson was a consensual encounter, not a detention.

(2) Roberson's consent to the search of his person was voluntary.

Roberson contends the prosecution did not establish his consent to the search of his person was voluntary. We disagree.

Consent is an exception to the warrant and probable cause requirements. (*Myers v. Superior Court* (2004) 124 Cal.App.4th 1247, 1251-1252.) Consent is not valid unless given voluntarily. (*People v. Bailey* (1985) 176 Cal.App.3d 402, 405.) A search that is the result of a mere submission to authority is not voluntary. (*Ibid.*) Whether a search was voluntary or was the product of coercion or duress is a question of fact, to be analyzed under the totality of the circumstances. (*United States v. Drayton, supra,* 536 U.S. at p. 201.)

Roberson asserts that Officer Earl demanded his identification, as discussed previously, but there is nothing in the record suggesting Officer Earl did anything more than park his patrol car, approach Roberson on foot, *ask* him what was going on, *ask* him for his driver's license, and *ask* him if he could search him. Officer Earl testified without contradiction that Roberson consented to the search of his person by saying, "[G]o ahead, I've got nothing illegal." When asked if Officer Earl could search him, Roberson did not respond by saying, "Do I have to let you search me?"; "What will happen if I say no?";

"Do I have a choice?"; "I'd rather not," or anything suggesting he was coerced or pressured into allowing the search. Officer Earl asked Roberson only once if he could search him, and there is nothing in the record suggesting that Roberson hesitated in any way before giving his clear and unambiguous answer: "[G]o ahead, I've got nothing illegal."

Based on the totality of these circumstances, we hold that the trial court's implied finding that Roberson voluntarily consented to the search of his person by Officer Earl was supported by substantial evidence.

DISPOSITION

The judgment is affirmed.